mining this amount, we would have to ascertain the dependency at the date of death and at the date of trial to arrive at a median figure. This resultant figure would then be multiplied by the time interval between the date of death and trial. The parties before us concede that the figure of $900 should be adopted as the dependency at the date of death. However, they are not agreed as to the dependency at the date of trial, and there is no material on which we can assess the amount of such dependency. It is therefore impossible for us to determine on a rational basis the amounts of pre-trial loss and future loss, both of which, however, must be contained in the global sum of $165,000.

In awarding interest at 6% per annum on the whole amount of $123,750 (*i.e.* 75% of $165,000 as agreed upon by the parties), the learned trial judge apparently was following the decision of this court in *Lee Soon Beng* v. *Wee Tiam Sing.*[4] That as a decision on an award of interest on actual loss in a non-fatal accident claim, which, in our view, is not of much assistance in a case such as this. The learned trial judge did not consider the guidelines laid down in *Cookson* v. *Knowles;*[3] nor was any argument addressed to him in that respect. Following those guidelines, interest at half the current rate would only be awarded on the pre-trial loss and no interest at all would be awarded on the future loss. Hence, interest at 6% per annum on the whole sum of $123,750 as awarded by the learned trial judge is much too high and cannot stand.

The next question is what is a fair and appropriate rate of interest which should be adopted here. Applying the guidelines in *Cookson* v. *Knowles*[3] – in so far as they can be applied – we think that a fair and appropriate rate of interest in this case should be 2% per annum on $123,750 from the date of service of the writ to the date of judgment which amounts to $9,927.

Finally, we do not think that this is an exceptional case in which the principles in *Cookson* v. *Knowles*[3] should be departed from. Counsel for the respondents have cited unreasonable delay on the part of the appellants in coming to a settlement. The accident took place in 1981 but the settlement was only reached at the date of trial. We do not think the appellants' conduct justifies an increase in interest. On the facts, it may well be that the appellants, being the deceased's employer, were better placed to know his salary and employment prospects but certainly not the dependency. In any case, interest is not awarded as a punishment to the debtor for withholding the money, although any unjustifiable delay on his part would be a reason for making an interest award just as unjustified delay by the plaintiffs in claiming it might be a reason for refusing to make such an award (per Lord Wilberforce in *General Tire & Rubber Co.* v. *Firestone Tyre & Rubber Co.*[5]).

In the circumstances, the judgment is varied by reducing the amount of $153,450 to $133,677 and reducing proportionately the amounts awarded to the dependants as follows:

(a) to Lee Pui Keng	$81,168
(b) to Wong Meng Hon	$43,429
(c) to Sing Fong	$ 6,080

(in each case rounded to the nearest dollar)

The amount of $3,000 awarded to Lee Pui Keng for funeral expenses remains unaffected. There will be no order as to costs and the amount deposited as security for costs be refunded to the appellants or their solicitors.

Order accordingly.

Solicitors: *Goh, Poh & Partners; Murphy & Dunbar.*

CHINA STEEL CORPORATION v. PAN ASIA SHIPYARD & ENGINEERING CO. (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Thean & Coomaraswamy JJ.) 13 May 1988]

[Singapore – Civil Appeal No. 12 of 1984]

Sale of Goods – Shipment of damaged steelplates – Clean bill of lading – Whether bill constituted evidence of the quality of the goods between seller and buyer – Trial court's finding of 50% liability on seller – Apportionment of damage – Appeal on – Dispute only on facts, not law.

The appellants entered into a contract of sale of steelplates with the respondents. The respondents alleged that the steelplates were in a damaged condition when they arrived. The respondents withheld payment of a portion of the purchase price so as to meet the costs of treating the damaged steelplates. The appellants sued the respondents for this sum and the respondents counterclaimed for the loss and damage allegedly suffered by them as a result of the damaged condition of the steelplates.

Before the trial, consent judgment was entered in favour of the appellants for their claim in the action. At the trial on the counterclaim, counsel for both sides did not

dispute on the law and the case turned entirely on facts and depended for its determination on two primary issues. The first was whether, at the time of shipment, the plates were of merchantable quality and fit for the purpose for which they were bought. The second was whether the respondents were entitled to the damages claimed by them.

The trial court found that the condition of the plates was due to defects in the plates, the spillage of salt on to the plates during the discharge of the cargo and the exposure to weather in the respondents' open yard. In the result, the court found the appellants liable for 50% of the defects and awarded the respondents only 50% of the damages on the counterclaim. The appellants appealed against the trial court's decision and the respondents, in their cross-appeal, sought to vary the judgment. The appellants denied that the steelplates were damaged when shipped and relied, *inter alia*, upon the fact that a clean bill lading had been issued.

Held, dismissing the appeal and cross-appeal: (1) a bill of lading may be clean "on its face", but may fail to disclose such qualitative defects in the goods as such defects would not normally be disclosed in a bill of lading. Moreover, it is doubtful whether the seller is able to rely on the bill of lading as evidence of the quality of the goods as against the buyer. Statements on a bill of lading, at most, constitute some evidence (though not conclusive) of the stated condition of the goods between the shipper and the carrier;

(2) the court is not justified in interfering with the trial judge's findings of fact on the basis of the arguments advanced by the appellants and the respondents;

(3) the apportionment of damage followed inevitably from the judge's finding that part of the damage was clearly within the respondents' risk. It has not been demonstrated that any error of law underlay the apportionment arrived at by the trial court. The trial court was clearly entitled to halve the damages claimed.

Case referred to:

(1) *Mash & Murrell Ltd.* v. *Joseph I Emanuel Ltd.* [1961] 1 W.L.R. 862 (refd).

COURT OF APPEAL.

Joseph Hoo for the appellants.

Arul Chandran for the respondents.

Cur. Adv. Vult.

Coomaraswamy J. (delivering the judgment of the court): China Steel Corporation, a Taiwan company, entered into a c.i.f. contract of sale of steelplates with Pan Asia Shipyard and Engineering Co. (Pte) Ltd., a Singapore company carrying on business as shipbuilders and repairers. Payment was to be by confirmed irrevocable sight letter of credit, a term of which was that shipment was to be effected not later than 15 December 1979.

China Steel Corporation ("the appellants"), the plaintiffs in the action, failed to effect the shipment in time, the steelplates having been shipped on 9 January 1980 and accordingly could not draw on the letter of credit.

The steelplates arrived in Singapore on 18 January 1980 and were discharged into the godown of the Port of Singapore Authority from 21 to 23 January 1980. The purchasers ("the respondents") alleged that the steelplates were in a "damaged condition" – the exact nature, time and extent of the damage being in dispute. Despite the condition in which the respondents found the plates on discharge, they took delivery on or about 24 January 1980 as the plates were urgently needed for the construction of certain vessels. The plates were stored (where they normally were) in the respondents' premises in the open yard. The respondents were not prepared to pay the full purchase price due to the alleged damaged condition of the steelplates. Negotiations followed, resulting in the respondents paying, under protest, the price of the goods less US$16,000 which was withheld by the respondents to meet the costs of treating the damaged steelplates and which was the sum claimed by the appellants in the action. In the action, the respondents counterclaimed for the loss and damage allegedly suffered by the respondents as a result of the damaged condition of the plates. Before the trial, consent judgment was entered in favour of the appellants for their claim in the action. Kulasekaram J., before whom the counterclaim was tried, gave judgment for the respondents for $20,106.98.

In their counterclaim, the respondents alleged (1) that it was an implied term of the contract of sale that the goods be of merchantable quality and that they be reasonably fit for the purpose for which they were bought; (2) that in breach of these terms, the steelplates were shipped and delivered to the respondents in a damaged condition in that they were corroded and unfit for use as ship plates; and (3) that they had put the steelplates into a fit condition by treating the plates and suffered loss and damage, which were particularized in the counterclaim.

In the defence to the counterclaim, the appellants did not deny that there were such implied terms as pleaded by the respondents. They denied, however, that the plates were shipped and delivered in a damaged condition but admitted "that some of the plates were found to be damaged upon discharge from the carrier".

The appellants now appeal against the whole of the judgment and the respondents in their cross-appeal seek to vary the judgment.

No difficulty arises with regard to the interpretation of the contract of sale. It is not in dispute that the relevant contract of sale was a true c.i.f. contract. The nature of, and the incidence of risk contemplated by such a form of contract, are clearly stated in *Halsbury's Laws of England*, Vol. 41, paragraph 909, as follows:

"Under a c.i.f. contract, the duty of the seller, so far as physical handing over of the goods themselves is concerned, is accomplished when the goods are put on board the ship or other specified place or vehicle for the purpose of the transit. In addition, he is under an obligation to make a contract of carriage with the carrier under which the goods will be taken to their contractual destination and there delivered, to effect an insurance available for the buyer and to forward the bill of lading, policy of insurance and invoice to the buyer. Against tender of these documents the buyer's liability to pay the price arises. The contract is thus, in a commercial sense, an agreement for the sale of goods to be performed by delivery of documents, the seller having obligations in law in relation to both the goods and the documents covering them.

Under a c.i.f. contract the property in the goods will commonly pass when the documents which represent the goods are handed over in exchange for the price. But, in accordance with general principle, property may, if the contract shows such an intention, pass at some different stage, as upon shipment or upon consignment of the documents to the buyer. Risk will pass on or as from shipment."

This view follows from the commercial risks taken by the parties to such a contract. The risk that the goods may not be of the right quality is one that the buyer takes, to the extent of being bound to assert remedies in respect of defects by action against the seller.

The law not being in dispute, the case turned entirely on facts and depended for its determination on two primary issues. The first was whether, at the time of shipment, the plates were of merchantable quality and fit for the purpose for which they were bought. The second was whether the respondents were entitled to the damages claimed by them.

After a trial which occupied some seven days in all, the judge immediately announced his decision in which he found that the condition of the plates was due to "defects in the plates (and to) salt falling on discharge (together with) exposure in the yard (at the respondents' premises) with salt (on them) from 20 January 1980 to 23 February 1980". In the result, he found the appellants liable for 50% of the defects and gave judgment for the respondents in the sum of $20,106.98 with interest from 24 November 1984.

In his written grounds, he considered that the issue he had to determine was "what caused the corrosion on the plates and the defective condition when the (respondents) received them". That depended essentially on whether he accepted the evidence of the appellants' prime witness, one Wu Yu-Chun, the only witness who saw the plates at the time of the loading at Kaohsiung Harbour, Kaohsiung, Taiwan, or the evidence of the respondents as to the condition of the plates on arrival and the proper inferences to be drawn therefrom. The evidence of Mr. Wu and his loading survey report were decisively rejected by the judge. In the light of the evidence by one Ng Cheng Siong, the managing director of Applied Research Corporation, and Dr. S. K. Roy's report, which was admitted in evidence as part of the agreed bundle, the judge considered that the "unusual presence of mill scales" on some areas of the plates and the condition of the plates on 23 January 1980 were such that the plates were "of an irregular and weathered stock". He went on, however, to find that the plates also suffered from corrosion due to exposure to weather, with salt on them, in the open yard at the respondents' premises, the salt having fallen on the plates during the discharge from the vessel from torn bags of a cargo of salt in the same shipment.

On the basis of these findings, the judge apportioned the blame equally to both these factors and accordingly, halved the expenses incurred by the respondents as a result of the damaged condition of the plates.

Before considering the various matters relied on by the appellants and respondents in support of their contention that the judge's findings should be reversed, it is necessary to summarize the evidence before the judge.

The trial being solely on the counterclaim, the respondents led evidence first. Their evidence consisted of four witnesses and a report entitled "Investigation into Corrosion of Steel Ship Plates" by one Dr. S. K. Roy of the Faculty of Engineering, National University of Singapore. The first witness to give evidence for the respondents was one Lian Beng Soon, the purchasing officer of the respondents' company, who saw the plates at the Port of Singapore Authority godown before the

clearing agent took delivery of the plates. He found the plates to be in a "bad condition" in that they were "pitted and corroded and unfit for fabrication of vessels". Photographs of the plates were taken and were produced at the trial to the judge.

The next witness was one Eng Meng Kee, the administrative manager of the respondents' company. He saw the plates while they were lying in the open yard at the respondents' premises. His evidence was that the plates were "rusty" and could never be used for the fabrication of vessels and that the plates could never have been pitted and corroded to the extent he found them in a matter of two or three weeks.

The next witness was one Miss Lim Koei Ing, the executive director of the respondents' company. She gave evidence that (1) the respondents "accepted" the plates, despite the damaged condition as they were urgently needed for the building of the vessel, (2) although the respondents had in the past kept the plates in the open yard, the plates had never rusted in that manner and (3) that they had "no problems" with subsequent purchases of steelplates from the appellants.

The next witness was one Ng Cheng Siong, the managing director of Applied Research Corporation, whose evidence was concerned only with how the defects in the plates could be remedied and brought to the requisite standard for shipbuilding. It is, however, not insignificant that in his report, he found areas on the plates with mill scales, for which he recommended abrasive blasting, and not wire brushing, for this removal.

The report by Dr. S. K. Roy was admitted in evidence as part of the agreed bundle. He was, however, not available to give evidence. In his report, he stated that he inspected the plates at the respondents' premises on 23 February 1980 and observed that "the topmost plate was found badly corroded ... The inside plates were also severely corroded. Corrosion was most severe beneath and around some light-brownish substance sticking to the plates. The plates got contaminated by this substance during shipment.'" In Chapter X, "Mill Scales", he stated that "the appearance of the mill scales on the Taiwanese steelplates was somewhat uncommon" and went on to explain the nature of mill scales as follows:

"Chapter X – Mill Scales

The appearance of the mill scales on the Taiwanese steelplates was somewhat uncommon ... When the air meets the red-hot metal, a crust of oxide (mill scale) is formed on all surfaces of the steel. If the scale remained unbroken it could form a protective coating for the steel. However, when the mill scale becomes broken, steel becomes the anode and the mill scale becomes the cathode. If moisture is allowed to form an electrolyse rapid corrosion results. This happens in salt water. The attack is made more intense by the fact that the anode is small compared to the cathode. The large amount of oxygen reaching the large cathode area would usually permit a fairly high current to flow and since its effect is concentrated on the small anodes, the attack will produce serious pitting. *It may be stated as a general rule that steel exposed with mill scale present will be pitted about three times as deeply as descaled steel for short period exposure* – such as a few months ... The mill scale in the Taiwanese steel was very thin at many places showing the bare metal in a considerable part of the surface area that was not affected by salt ... It is quite likely that the Taiwanese steel belonged to an irregular/weathered batch."

(emphasis added)

Dr. Roy then expressed his general conclusion as follows:

"The observed enhanced corrosion is due to contamination with alkali salts during shipment. The unusual appearance of the mill scale is probably due to its belonging to an irregular/weathered batch. However, with proper treatment and corrosion protection the material can be used for construction of ships."

It is to be observed that the trial judge accepted Dr. Roy's conclusion that "the unusual appearance of the mill scales was due to the plates belonging to the irregular and weathered batch". Having regard to Dr. Roy's earlier explanation that the mill scales could produce "serious pitting", the judge clearly regarded this as a defect in the plates. The judge, however, rejected Dr. S. K. Roy's view that the enhanced corrosion occurred through contamination with other cargo during shipment. In the judge's view, Dr. Roy had simply assumed that to be so, when the "factual position" was that "the white powder (salt) only got on to the plates during discharge". The judge based this finding on the evidence of the appellants' witness, one David Lim, a surveyor, whose evidence we would consider later.

The appellants' evidence consisted of three witnesses. The first witness was one K. L. Du, the assistant manager of the marketing department of the appellants' company. He saw the plates on 22 January 1980 and took photographs of the cargo. He gave evidence that there was "some white powder" on the surface of the plates but could not say whether the plates were "damaged". It is, however, not insignificant that in his letter to the

insurer dated 23 January 1980, he stated that the plates were "seriously damaged".

The evidence of one Wu Yu-Chun, the manager of Taiwan Marine Survey Ltd., was of some importance, as he was the only witness who saw the plates at the time of loading. According to him, the plates were in good order and condition except for the presence of atmospheric rust (which he explained was not a defect in the plates) on about 20 tonnes of the cargo which was about 7%. As mentioned earlier, the trial judge rejected his evidence essentially because he could not reconcile it with the other evidence which pointed to the unusual presence of mill scales on the plates and defective condition of the plates as stated by K. L. Du in his letters to the insurers on 23 January 1980.

The next witness was one David Lim, a surveyor with the Consolidated Survey Service (Pte.) Ltd., a company carrying on business as surveyors. He carried out the survey on 23 January 1980 on board the vessel at the Port of Singapore Authority wharf. His evidence was that the salt on the plates came on as spillage during the discharge and that at that time, the plates were not corroded or rusted. When he saw the plates a few days later at the respondents' yard, they were "rusted or corroded".

We now turn to consider the various matters relied upon by the appellants in support of their contention that the judge's finding should be reversed. The first matter is that the judge erred in stating that "the issue here between the parties is what caused the corrosion on the plates and the defective condition when the (respondents) received them". It is, of course, correct that the real issue that fell for the judge's decision (the contract of sale being a contract c.i.f.) was whether, at the time of shipment, the plates were of merchantable quality and fit for the purpose intended. In our view, this criticism of the judge's statement of issue is not sufficient to undermine his findings. First, it is (at best) highly questionable whether in expressing himself in that manner, he failed to appreciate that the risk of damage to the plates from the time of shipment was on the buyer, thus placing the burden of proof on the respondents. Secondly, and more importantly, in so expressing himself, the judge clearly had in mind the fact that if the damage to the plates occurred only after shipment, the buyer (the respondents) would not be entitled to the damages claimed. In our judgment, that submission is without merit.

The second matter relied upon by the appellants is that the judge was wrong in rejecting the direct evidence given by Wu Yu-Chun, the appellants' witness, as to the condition of the plates at the time of shipment in preference to inferences drawn by the other witnesses, in particular by Dr. S. K. Roy in his report. This submission we are unable to accept. First, the evidence of Wu was clearly considered by him in his written grounds and rejected in the light of the other evidence in the case, in particular, that given by Mr. Ng Cheng Siong and the report of Dr. S. K. Roy. To the extent that Wu's evidence was inconsistent with Dr. Roy's report, the judge was clearly entitled to reject it. Secondly, the judge was entitled to reject Wu's evidence in the light of the statements by K. L. Du (the appellants' own witness) to the insurers that the plates were "seriously damaged" when he inspected the plates at the wharf on 22 and 23 January 1980. Thirdly, the judge was entitled to rely on Dr. S. K. Roy's report insofar as it concluded that the unusual presence of mill scales was attributable to the plates belonging to an "irregular or weathered stock", which, in the context of his report, was clearly a defect in the plates. It is to be remembered that, although Dr. S. K. Roy was not available as a witness, the judge was entitled to accept the contents of this report since it was admitted in evidence by consent as part of the agreed bundle without the need to produce the maker. In these circumstances, the conclusion reached by the judge was not only one which was open to him on the evidence, but was clearly justified by the evidence. Having evaluated the evidence given before the judge and the proper inferences to be drawn from them, we do not see sufficient reason to justify us in reversing his findings.

The third matter relied on is that a "clean" bill of lading would not have been issued if the steelplates were corroded and damaged at the time of loading. We cannot accept this submission. First, a bill of lading may be clean "on its face", but may fail to disclose such qualitative defects in the goods as these would not normally be disclosed on the face of the bill of lading. It is not insignificant that for a bill of lading to be clean, it need only acknowledge that the goods are in apparent, *and not actual,* good order and condition. Secondly, and more importantly, it is doubtful whether the seller is able to rely on the bill of lading as evidence of the quality of the goods *as against the buyer.* Statements on the bill of lading, at most, constitute some evidence (though not conclusive) of the

stated conditions *as between the shipper and the carrier.*

The cross-appeal

Counsel for the respondents, for his part, relied upon his two main propositions in support of his contention that judgment for part of the claim for the respondents was itself a judgment for the respondents for the whole. The first proposition is that "the fact that the goods were unmerchantable at the time of shipment makes the question of who bears the risk of deterioration in transit irrelevant". In our opinion, that proposition does not assist us in the present case. It may be that the proposition has some validity in a case where the unmerchantability of the goods is due *entirely* to some original latent defect in the goods which is in no way aggravated by subsequent deterioration caused in transit or on discharge. In the present case, however, the difficulty which the trial judge had to resolve – and on which there is much conflict of evidence – was whether the "damaged condition" of the plates was the result of inherent defects in the plates ("irregular or weathered stock") or corrosion which occurred during transit or discharge. Had the judge found that the "damaged condition" of the plates was *solely* the result of inherent defects in the plates, the principle stated above might have been applicable.

The second proposition advanced by the respondents is that "the appellants have breached their implied undertaking to supply merchantable goods that would endure a normal journey and be in a merchantable condition on arrival and a reasonable time thereafter to allow for disposal or use, as the case may be". In *Mash & Murrell Ltd.* v. *Joseph I Emanuel Ltd.*,[1] Diplock J. said (at p. 865):

> "I have so far travelled through my legal life under the impression, shared by a number of other judges who have sat in this court, that when goods are sold under a contract such as a c.i.f. contract, or f.o.b. contract, which involves transit before use, there is an implied warranty not merely that they shall be merchantable at the time they are put on the vessel, but that they shall be in such a state that they can endure the normal journey and be in a merchantable condition upon arrival."

This implied undertaking was, however, not pleaded in the counterclaim and did not, strictly, fall for consideration. But had it arisen for decision, we would very much doubt whether it has any application to the present case. In our view, since in overseas sales the seller does not normally give any implied undertaking as to the condition of the goods on arrival, this implied undertaking of the seller must relate solely to the condition of the goods at the time of shipment and to their capacity to survive normal transit, and is only broken if, *at that time,* they suffer from a defect making them unfit to stand the journey. In the present case, the judge made no such findings and indeed there was no evidential basis to base a finding that the plates suffered from any such defects.

From all these reasons, we have reached the view that we are not justified in interfering with the trial judge's findings of fact on the basis of the arguments advanced by the appellants and the respondents.

Damages

The trial judge awarded the respondents only 50% of the damages on the counterclaim. This followed from his finding that part of the damage to the plates was caused by the spillage of salt during the discharge of the cargo and the exposure thereafter to the weather in the respondents' open yard. The damages claimed by the respondents fell essentially under two heads:

(a) expenses incurred in restoring the plates to their requisite standard for shipbuilding (including transportation and shot-blasting);

(b) expenses incurred in pelling off existing pitted plating.

The trial judge allowed all these items claimed under these heads except for two items arising from delay. These are:

(a) interest paid to bank on the trust receipt because of delay by plaintiffs; and

(b) loss of interest due to delay of production, pending reconditioning and making good of plates – 69 days at 13.75%.

The trial judge considered the documentary evidence put forward by the respondents in support of their claim and found them in order. He observed as follows:

> "Seventy-six of these plates were put into proper condition by their own contractor who was doing the shipbuilding work while the remaining 102 plates were sent to SNIP Steel Industries (S) Pte. Ltd. to their yards for the plates to be shot-blasted and put right. All the bills including the cost of transport from their premises to SNIP Steel Industries (S) Pte. Ltd. were put in evidence in support of their claim and I found them in order and they were not seriously challenged."

In our view, the apportionment of damage followed inevitably from the judge's finding that part of the damage was clearly within the respondents' risk. In our view, it has not been demonstrated that any error of law underlay the apportionment arrived at by the judge. In our judgment, he was clearly entitled to halve the damages claimed and there is nothing in the submissions to compel us to come to a different apportionment.

For these reasons, we would dismiss the appeal and cross-appeal. Each party must bear its own costs of appeal.

Appeal and cross-appeal dismissed.

Solicitors: *Joseph Hoo Morris & Kumar; C. Arul & Partners.*

CHEONG SEOK LENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chan Sek Keong J.C.) 1 June 1988]

[Singapore – Magistrate's Appeals Nos. 8 and 13 of 1987]

Criminal Law – Absence from National Service – Assignment under section 5(b) of the Vigilante Corps Act (Cap. 80, 1970 Ed.) – Validity of assignment – Vigilante Corps Act (Cap. 80, 1970 Ed.), ss. 5 & 15(1) – Enlistment Act (Cap. 93, 1985 Ed.), s. 10.

Armed Forces – National Serviceman – Absence without official leave – Assignment to Construction Brigade under section 5(b) of the Vigilante Corps Act (Cap. 80, 1970 Ed.) – Validity of – Vigilante Corps Act (Cap. 80, 1970 Ed.), ss. 5 & 15(1) – Enlistment Act (Cap. 93, 1985 Ed.), s. 10.

Statutory Interpretation – Ejusdem generis – Civil defence duties – Nature and meaning of section 5(b) of the Vigilante Corps Act (Cap. 80, 1970 Ed.) – Constitutionality of assignment – Whether assignment a subsidiary legislation – Whether publication of subsidiary legislation mandatory or directory – Interpretation Act (Cap. 1, 1985 Ed.), s. 23(1) – Constitution of the Republic of Singapore, art. 58.

The appellant was on 5 May 1983 served with an enlistment notice with accompanying instructions pursuant to section 10 of the Enlistment Act and was on 22 June 1983 enlisted for full-time national service in the Vigilante Corps. For his national service, he was posted to the Construction Brigade and was required to undergo a three-month residential training at the Civil Defence School II for the acquisition of skills in construction work. He left the school one Saturday on 2 July 1983 at 1 p.m. but failed to return by 9 p.m. on Sunday. Medical certificates covering the period 4-8 July 1983 were tendered. However, he failed to report at 9 p.m. on 8 July 1983 and continued to absent himself from duty for 50 days from that day until 24 September 1983. He was arrested by CNB officers on 13 October 1983 and admitted to Selarang Park Drug Rehabilitation Centre for treatment for drug addiction. On 30 May 1984, he was transferred to Jalan Awan Drug Rehabilitation Centre until 16 November 1984 when he was discharged. He was then arrested upon his discharge and subsequently convicted by a district court on 15 November 1984 on a charge under section 15(1) of the Vigilante Corps Act (Cap. 80, 1970 Ed.) for his unlawful absence from duty at Civil Defence School II with the intention of not returning to duty. The appellant did not dispute the evidence of the officer in charge of Civil Defence School II that he had briefed all newly enlisted national servicemen who were assigned to the Construction Brigade in compliance with a direction issued by the Minister for Home Affairs, Singapore, to the Commandant, Vigilante Corps. The said direction of the Minister ("the assignment") was made in pursuance of section 5(b) of the Vigilante Corps Act.

The appellant's counsel made a submission of no case to answer on the following grounds:

(a) that the assignment was *ultra vires* the Vigilante Corps Act and therefore the appellant, as a member of the Vigilante Corps, was under no duty to undertake or perform civil defence duties;

(b) that the imposition of construction work on the appellant was unconstitutional as a form of forced labour prohibited by article 10(2) of the Constitution of the Republic of Singapore;

(c) that the assignment was invalid or had no effect as it had not been published in the Gazette as required by section 23(1) of the Interpretation Act;

(d) that if the assignment was valid, the appellant had no notice of it.

The learned district judge rejected all these submissions and convicted the appellant. The appellant was sentenced to four months' imprisonment with effect from 22 August 1986 which was the day the appellant had been lawfully detained in a drug rehabilitation centre. The appellant has appealed against his conviction and the public prosecutor has appealed against sentence.

Held, allowing the appeal against conviction for desertion: (1) the Minister in making the assignment acted within the scope of his power under section 5 of the Vigilante Corps Act;

(2) the assignment was constitutional since the Minister made the assignment pursuant to a delegated power vested in him by section 5 of the Vigilante Corps Act;

(3) the appellant's conviction was set aside on the ground that the assignment was a subsidiary legislation which required mandatory publication. As the assignment was for some reason inadvertently not published in the Gazette, it was invalid in the sense that it failed to take effect even though it was valid in the sense that the Minister had the power to make it. Consequently, the assignment could not have lawfully vested in the Vigilante Corps functions and duties relating to civil defence;